misconduct or other conduct not up to partnership standard as amounting to gross misconduct. In the circumstances, looking again at all the particulars alleged in furtherance of paragraph 3 of the statement of claim, I am not minded to regard them as amounting to gross misconduct. There is also a contradiction in the statement of claim which alleges that during the year 1967 there was reason to complain of the conduct of the defendant with regard to the affairs of the partnership whereas in the further and better particulars of the statement of claim it was alleged that this occurred during the year 1966 and onwards. We have the admitted fact that during the greater part of the year 1967, at least from March until October 1967, the defendant was on leave and therefore for the greater part of the year there would be very little evidence in support of the complaint of misconduct. The allegation again that the defendant by becoming a director of a mining company in paragraph 5 was in breach of the term of the partnership agreement, namely his failure to devote full-time services to the partnership, I cannot accept. I do not know whether the plaintiffs are estopped but it must be well known to them that the defendant had accepted and it is generally not unusual in any partnership for a partner to accept directorships in companies. In fact, I believe some firms even encourage it as a means of furthering the interests of the partnership, by channelling the company business to the firm. I therefore disregard this as a serious breach of the partnership agreement or as gross misconduct for the purpose of section 207. I have been referred to many sub-sections of section 206 of the Contracts (Malay States) Ordinance, 1950. That section begins with the words "In the absence of any contract to the contrary." I have therefore to look at the agreement of partnership and in particular, the dissolution clauses, namely, 23, 24 and 25. Clause 14 provides another method other than those just referred to for the determination of the partnership, which reads:

"If any partner shall from illness or accident or other cause be incapacitated from attending to the partnership business for 3 months consecutively and the other partners shall at or after the expiration of 3 months give to the incapacitated partner not less than 1 month's notice in writing of their intention to determine the partnership as to the incapacitated partner then at the expiration of such notice the partnership shall as to such incapacitated partner determine accordingly and he shall be deemed to have retired from the partnership within the meaning of any reference to retirement contained in clause 23 hereof unless before the expiration of such notice he shall have resumed his partnership duties to the reasonable satisfaction of the other partners or partner."

This can safely be disregarded because that is not the ground upon which this prayer for dissolution is made. I accept the arguments of counsel for the defendant that there are only two ways in which this partnership could be dissolved — by mutual consent or by 6 months' notice in writing. It is urged by counsel for the plaintiffs that there will be considerable hardship for the three plaintiffs will have to work for the benefit of the defendant for a period of 6 months to carry him so to speak and then hand over the benefits to the defendant. Unfortunately, this is an agreement to which the parties were in no sense unappreciative of the obligations they undertook and the responsibilities they were going to shoulder. I feel some sympathy for that argument but the court is not entitled to go behind the agreement.

Upon the preliminary issue I therefore find for the defendant and I hold that the court has no jurisdiction in the circumstances to decree an order for dissolution. There must, to my mind, be some reason for the omission in section 207 of the further paragraph which exists in the United Kingdom Partnership Act which reads:

"Whenever in any case circumstances have arisen which, in the opinion of the court, render it just and equitable that the partnership be dissolved."

That omission from our Contracts (Malay States) Ordinance, 1950 cannot be wholly disregarded and I would be extending the jurisdiction of the court beyond what the legislature has chosen to confer. True Mr. Peddie has drawn my attention that the English cases cited were decided prior to the enactment of the Partnership Act of 1890. In the absence of any statute to the contrary, the courts there felt that they could be liberal and it may be that the enactment of paragraph (f) of section 35 of the United Kingdom Act was to accept and acknowledge the practice. I am reminded however of the words of the Chief Justice of Singapore in the case of *Ting Tien Kwang & Ors.* v. *Kong Sung Seng & Ors.*[1] where he says:

"Section 14 (equivalent to section 207 of our Contracts (Malay States) Ordinance) merely gives the court power to dissolve a partnership at the suit of a partner on certain specific grounds and this section does not specify notice of dissolution as a ground. ... The legislature has not provided for the dissolution of a partnership at will by the unilateral act of a partner but has specifically provided for a partner retiring from a partnership at will."

On that basis I have ruled prayer (a) must fail and I also hold that the court has no general power to dissolve a partnership based on a written agreement except upon the grounds specified in section 207.

I hold that the particulars which are set out in amplification of paragraph 3 do not amount to gross misconduct which, unfortunately, is not defined and is left to the court to construe. To amount to gross misconduct, there must be more than what has been specified in the particulars.

There will be judgment for the defendant with costs.

Judgment for the defendant.

Solicitors: *Skrine & Co.; R. R. Chelliah Bros.*

LAI FOOK KEE v. PUBLIC PROSECUTOR

[A.C.J. (Abdul Aziz J.) October 3, 1969]

[Kuala Lumpur — Criminal Appeal No. 38 of 1969]

Bribery and Corruption — Corrupt transaction with agent — Knowingly giving document containing statement which was false in a material particular and which was intended to mislead principal — Proof of personal knowledge by the accused that statement was false — Prevention of Corruption Act 1961, s. 4 (c).

This was an appeal against the conviction of the appellant on three charges under section 4 (c) of the Prevention of Corruption Act. The charges arose out of the piling work on the low-cost housing scheme undertaken by the Kuala Lumpur

Municipality. The appellant was employed by the municipality as a clerk-of-works. The charges were in relation to three specific acts and three specific piles including allegations that the appellant knew the actual depth of penetration of the piles, but falsely submitted record sheets showing a greater penetration than the actual depth.

Held, allowing the appeal: for the purposes of section 4(c) of the Act, personal knowledge that the three piles were short driven was an essential ingredient of the charge and in the absence of any specific finding of the learned president of personal knowledge by the appellant that the statement in the document was false, the conviction cannot stand and the appellant must be acquitted.

Cases referred to:-

(1) *London Computator Ltd.* v. *Seymour* [1944] 2 All E.R. 11.

(2) *Sinniah Sokkan* v. *Public Prosecutor* [1963] M.L.J. 249.

(3) *Public Prosecutor* v. *Ng Chong* [1946] M.L.J. 68.

MAGISTRATE'S CRIMINAL APPEAL.

Edgar Joseph Jr. for the appellant.

Ajaib Singh (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Abdul Aziz J.: This is an appeal against an order of the learned President of the Sessions Court, Kuala Lumpur, sentencing the appellant to twelve months imprisonment on each of the three charges under section 4(c) of the Prevention of Corruption Act, 1961. The charges read as follows: —

"First Charge:

That you on 13.5.66 sometime between 7.00 a.m. and 7.00 p.m. at Block (B), Municipal Low Cost Housing Flats Site, Jalan Shaw, Kuala Lumpur, in the District of Kuala Lumpur, in the State of Selangor, *did knowingly give* to an agent to wit, the Structural Engineer namely Mr. YIN MUN YING an employee of the Kuala Lumpur Municipality, a document, to wit, Pile Driving Record Sheet No. 6 for Job No. 13/66 in connection with the construction of Pile Foundations, Pile Caps, Pedestals and Site Levelling for 2 blocks of 17 storey Low Cost Flats at the abovementioned site vide Contract No. 13/66 in respect of which the Principal was interested and which document as submitted by you contained *a statement which was false in a material particular* namely, it stated that Pile No. D 26/2 was driven into the ground to a penetration length of 30 feet 4 inches when in actual fact the depth of penetration was 19 feet and which to your knowledge was intended to mislead the principal, to wit, the Kuala Lumpur Municipality and that you thereby committed an offence punishable under section 4(c) of the Prevention of Corruption Act No. 42/61.

Second Charge:

That you on 30.5.66 sometime between 7.00 a.m. and 7.00 p.m. at Block (B), Municipal Low Cost Housing Flats site, Jalan Shaw, Kuala Lumpur, in the District of Kuala Lumpur, in the State of Selangor, *did knowingly give* to an agent to wit, the Structural Engineer namely Mr. YIN MUN YING an employee of the Kuala Lumpur Municipality, a document, to wit, Pile Driving Record Sheet No. 19 for Job No. 13/66 in connection with the construction of Pile Foundations, Pile Caps, Pedestals and Site Levelling for 2 blocks of 17 storey Low Cost Flats at the abovementioned site vide Contract No. 13/66 in respect of which the Principal was interested and which document was submitted by you contained *a statement which was false in a material particular* namely, it stated that Pile No. M 22-1 was driven into the ground to a penetration length of 29 feet 3 inches when in actual fact the depth of penetration was 18 feet 3 inches and which to your knowledge was intended to mislead the principal, to wit, the Kuala Lumpur Municipality and that you thereby committed an offence punishable under section 4(c) of the Prevention of Corruption Act No. 42/61.

Third Charge:

That you on 3.6.66 sometime between 7.00 a.m. and 7.00 p.m. at Block (B), Municipal Low Cost Housing Flats site, Jalan Shaw, Kuala Lumpur, in the District of Kuala Lumpur, in the State of Selangor, *did knowingly give* to an agent to wit, the Structural Engineer namely Mr. YIN MUN YING an employee of the Kuala Lumpur Municipality, a document, to wit, Pile Driving Record Sheet No. 22 for Job No. 13/66 in connection with the construction of Pile Foundations, Pile Caps, Pedestals and Site levelling for 2 blocks of 17 storey Low Cost Flats at the abovementioned site vide Contract No. 13/66 in respect of which the Principal was interested and which document as submitted by you contained *a statement which was false in a material particular* namely, it stated that Pile No. M 26-1 was driven into the ground to a penetration length of 36 feet 5 inches when in actual fact the depth of penetration was 24 feet 6 inches and which to your knowledge was intended to mislead the principal, to wit, the Kuala Lumpur Municipality and that you thereby committed an offence punishable under section 4(c) of the Prevention of Corruption Act No. 42/61."

It will be noted that these were three specific charges in relation to three specific acts, and three specific piles involving allegations that the appellant knew the actual depth of penetration of the piles, but falsely submitted record sheets showing a greater penetration than the actual depth.

There are several grounds of appeal, of which I shall only refer to two: first, that a conviction was not recorded before the sentence was passed, and, secondly, there was no specific finding by the learned president nor was there any evidence to show that the appellant knew of the falsity of the records in question and, if so, whether he intended to mislead his principal.

The charges arose during the course of the piling work on the low cost housing scheme at Jalan Shaw undertaken by the Kuala Lumpur Municipality. At the relevant times, the appellant was employed by the Municipality as a clerk-of-works, whose duties were — according to the engineer-in-charge — "... to represent the Municipality to look after all the works done on the site to check that the work is done according to the specifications and drawings." According to him, the appellant was given blank forms and instructed how the forms should be filled. The forms required a number of technical particulars, including the depth of penetration of the piles below ground level. It was on the basis of the record signed by the appellant and the depth of penetration of the piles that Gammons, the piling contractors, were paid. His other main duty was to record the number of blows per foot penetration for a certain number of piles "for technical research purposes". To discharge his duties faithfully, the prosecution evidence shows that the appellant had to attend to every pile throughout the time when the pile was being driven into the ground. Evidence shows that Gammons employed one Philip Austin as a subcontractor who employed various foremen and labourers to do the actual work. Gammons employed Pereira (the first accused) as the site engineer and Thomas as its supervisor and representative. Each of them had a part to play in the piling project. According to the Municipal site engineer, it would be physically impossible for one clerk-of-works to attend to all the

duties required of him when four frames were working simultaneously. The site engineer elaborated the duties to be performed by him which were accepted by the learned president as "very burdensome".

The most important aspect of the whole piling operation was the final measurement of the depth of penetration of the piles. There was a conflict of evidence as to whether the appellant attended to the measurements of the piles personally or whether he did so or delegated the work to somebody else or relied on the measurements given by accused No. (1). There is no evidence to show that the appellant took the measurements or was present when the measurements for pile Nos. D26/2, M22-1 and M26-1 were taken. But, on balance and having regard to the burdensome duties he has to perform, it is more likely that Thomas took the measurements of the different piles, including the three piles and the appellant used these figures supplied by Thomas for his records. The learned president made no specific finding as to whether the appellant took the measurements of the three piles or was present when the measurements were taken, but made a general finding as follows:

"What is in controversy is whether the accused in making such false statements did so knowingly with the intention to deceive. Clearly the prosecution greatly depends on circumstantial evidence to pin the guilt on the accused. Now what are the circumstantial evidence that is put forward before me. To begin with the accused is the sole representative of the Municipality. On him was placed the very burdensome duty of ensuring that the contract was properly performed and recording measurements of every pile driven appears to be the most important part of his duties. The *accused must be fully aware of this* as on the accuracy of such recordings payments are made to Gammons. He cannot now plead that this is humanly impossible."

With respect, these deductions were faulty because there could be more than one inference which could be reasonably drawn from the facts. It could be inferred that appellant must have known of the short-pilings or ought to have known of the short-pilings or that he was so grossly negligent as not to care whether the figures recorded were false or not. It is a well-known principal of law that, where there is more than one inference which could be drawn, the inference most favourable to the accused should be adopted.

For purposes of section 4(c) of the Prevention of Corruption Act, personal knowledge that the three piles (D26/2, M22-1 and M26-1) were short driven was an essential ingredient of the charge. In *London Computator, Ltd.* v. *Seymour*,[1] the appeal court was dealing with the Defence (General) Regulations which provided that —

"If, in furnishing any information ... any person makes any statement which he knows to be false in a material particular ... he shall be guilty of an offence..."

It was held that the word "knows" bears its ordinary meaning and is not to be construed as "ought to have known". In *Sinniah Sokkan* v. *Public Prosecutor*,[2] Gill J. (as he then was) was considering the meaning of "knowingly made a false statement" and he stated:

"Several grounds of appeal have been urged on behalf of the appellant against his conviction and sentence, but to my mind the main question to be considered is whether he knowingly made a false statement in relation to his date of birth with the intention of inducing the registration authority to grant him a Citizenship Certificate. In the case of *Public Prosecutor* v. *Ng Chong*[3] the Court of Criminal Appeal held that in a prosecution of any person under section 116 (1) of the Road Traffic Enactment, 1937, for 'making any statement which to his knowledge is false' for the purpose of obtaining the grant of any licence to him, it must not only be proved that the statement was false but also that it was consciously made and known to be false."

In the absence of any specific finding of the learned president of personal knowledge by the appellant that the statement which he gave was false, the conviction cannot stand and the appellant must be acquitted.

Consequently, since the learned president had passed sentence without recording a conviction, only the sentence imposed by the learned president will be quashed.

Appeal allowed.

Solicitors: *Edgar Joseph & Son.*

PUBLIC PROSECUTOR v. PEH CHOO KEY

[A.Cr.J. (Ong Hock Sim J.) October 9, 1969]

[Penang — Criminal Appeal No. 40 of 1969]

Road Traffic — Pirate taxi — Use of vehicle as public service vehicle without licence — Sentence — Forfeiture of vehicle — Discretion of magistrate — Magistrate unjustified in ordering release of vehicle — Duty of magistrate — Road Traffic Ordinance, 1958, s. 92 (1).

In this case the learned magistrate had convicted the respondent on his plea of guilty for using a motor vehicle as a pirate taxi and sentenced him to pay fines and to be disqualified for 12 months. The learned magistrate ordered the motor vehicle to be released to the respondent. The Public Prosecutor appealed against sentence.

Held: the learned magistrate in this case had failed to exercise his discretion in ordering the forfeiture or release of the vehicle in accordance with accepted principles but in the circumstances no order could be made on the appeal.

Cases referred to:-

(1) *Rex* v. *Ram Dayal* A.I.R. 1950 All. 134 at 137.

(2) *Chung Khiaw Bank Ltd.* v. *Public Prosecutor* [1968] 2 M.L.J. 196.

(3) *Public Prosecutor* v. *Chuah Khay Soon* [1967] 2 M.L.J. 110.

MAGISTRATE'S CRIMINAL APPEAL.

Abu Mansor bin Ali (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Ong Hock Sim J. (delivering oral judgment): The respondent had been charged on 3 charges in connection with operating a pirate taxi, namely:

(1) That you on 21.6.66 at about 8.25 a.m. at Perak Road, Penang, being the driver of Motor Car No. R.275, did use the said motor vehicle on a road as a public service vehicle without there being in force in respect of such motor vehicle a valid licence granted under Part V of the Road Traffic Ordinance, 1958 and that you have thereby committed an offence against sub-section 92 (1) of the said Ordinance, and punishable under the same sub-section.

(2) That you on the same date, time and place, did use the said motor vehicle on a road for a purpose not included in the licence in force, to wit, for the conveyance of persons for hire or reward, for which